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ABSTRACT. The role of sovereign authority in Hobbes' political philosophy is to establish peace and stability by serving as a definitive and unambiguous source of law. Although these broad outlines of Hobbes' account of political authority are uncontentious, matters quickly become more complicated once one seeks its normative basis. This much is evident from recent debates on the normative status of the laws of nature and the related issue as to whether Hobbes is better categorised as an incipient legal positivist or as a heterodox natural law thinker. In this paper I argue that although the positivist and natural law commitments in Hobbes' theory of political authority can be partially reconciled, such a reconciliation points to the need for more substantive theories of practical reason and truth than are to be found in Hobbes' official statements on these topics. Section II examines the positivist and natural law dimensions in Hobbes' thought and suggests that the role of sovereign authority in providing the definitive interpretation of the laws of nature allows a partial reconciliation to be effected. In section III, I consider the tension between this reconciliation and Hobbes' instrumentalism about practical reason and equivocal separation of authority and truth.

I. INTRODUCTION

The role of sovereign authority in Hobbes' political philosophy is to establish peace and stability by serving as a definitive and unambiguous source of law. Although these broad outlines of Hobbes' account of political authority are uncontentious, matters quickly become more complicated once one seeks its normative basis. This much is evident from recent debates on the normative status of the laws of nature and the related issue as to whether Hobbes is better categorised as an incipient legal positivist or as a heterodox natural law thinker. In this paper I argue that although the positivist and

natural law commitments in Hobbes' theory of political authority can be partially reconciled, such a reconciliation points to the need for more substantive theories of practical reason and truth than are to be found in Hobbes' official statements on these topics. Section II examines the positivist and natural law dimensions in Hobbes' thought and suggests that the role of sovereign authority in providing the definitive interpretation of the laws of nature allows a partial reconciliation to be effected. In Sect. III, I consider the tension between this reconciliation and Hobbes' instrumentalism about practical reason and equivocal separation of authority and truth.

II. RECONCILING HOBBES' POSITIVIST AND NATURAL LAW COMMITMENTS

Recent debates over the status of Hobbes as an early legal positivist or renegade natural law theorist have illuminated some of the tensions in the normative foundations of his theory of political authority. In this section I argue that whilst the apparent inconsistency between Hobbes' advocacy of a positivistic command theory of civil law and recourse to natural law arguments can be at least partially resolved, this tension points towards deeper fault lines in his account of political authority.

The controversy on the status of Hobbes as a legal positivist or natural law thinker hinges on the independent plausibility, yet apparent irreconcilability, of ascribing to him the following two theses:

1. The promulgated commands of the sovereign authority are sufficient to establish the existence and validity of civil law.
2. The laws of nature place moral constraints on the existence and validity of civil law.

Perhaps the clearest expression of thesis (1) is found in Chap. 6 of *De Cive*, where Hobbes states quite unequivocally that 'the civil laws (that we may define them) are *nothing else* but the commands of him who hath the chief authority in the city, for direction of the future actions of his citizens.'[1] This passage suggests that promulgated sovereign command is not only necessary for something to be a civil law, but also sufficient. Similarly, Chap. 26

[1] Thomas Hobbes, *De Cive* (New York: Appleton Century, 1949), p. 75 (italics mine).

of *Leviathan* states that 'the Authority of the Law ... consisteth in the Command of the Soveraign only.'[2] Thesis (2) is arguably more contentious, but seems entailed by the conjunction of Hobbes' characterisation of the laws of nature as immutable[3] and expressive of 'the true and onely Moral Philosophy'[4] with his claims that (a) there exist cases where subjects are not obligated to obey the commands of the sovereign[5] and may do so 'without Injustice'[6]; and (b) there is a moral obligation for the sovereign to obey the laws of nature.[7] The difficulty, of course, is that thesis (2) directly contradicts (1) by asserting that considerations of morality are relevant to the existence and validity conditions of civil law.

The once dominant view of Hobbes as an early legal positivist reflects thesis (1), i.e. the claim that the authoritative commands of the sovereign are sufficient to establish the existence and validity of civil law.[8] Thesis (1) may, moreover, be regarded as consistent with both (a) the separation and identification theses often taken to be core commitments of legal positivism; and (b) a thinner normatively inert definition of legal positivism which states that the validity of a norm is dependent upon its sources and not its merits.[9] Hobbes' characterisation as a legal positivist has nonetheless recently been challenged from a number of directions, with some theorists arguing that Hobbes is better regarded as a heterodox natural law thinker,

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[2] Thomas Hobbes, in Richard Tuck (ed.) *Leviathan* (Cambridge: Cambridge University Press, 1991), p. 142 of the 1651 Head edition. All pagination references to *Leviathan* are to this edition.

[3] *Ibid.*, p. 79.

[4] *Ibid.*

[5] These include cases where the sovereign asks subjects to kill or harm themselves, abstain from food, air, medicine and other necessary conditions of life, to confess to crimes or (under certain conditions) to serve as a soldier i.e. cases where the fundamental principle of self-preservation is placed in question. See Thomas Hobbes, *Leviathan*, pp. 111–112.

[6] *Ibid.*, p. 111.

[7] *Ibid.*, p. 169.

[8] See, in particular, Thomas Hobbes, *Leviathan*, pp. 137–150; Thomas Hobbes, *De Cive*, p. 75. Hobbes' influence on Bentham and Austin is obviously also significant in this respect. Some influential advocates of the view that Hobbes was a legal positivist are Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), pp. 107–110; Gregory S. Kavka, *Hobbesian Moral and Political Theory* (Princeton, NJ: Princeton University Press, 1986), pp. 248–250; S. A. Lloyd, *Ideas as Interests in Hobbes's 'Leviathan': The Power of Mind over Matter* (Cambridge: Cambridge University Press, 1992), p. 15.

[9] The separation thesis asserts that there is no necessary connection between law and morality. The identification thesis asserts that the content of the law can be identified without recourse to moral argument or evaluation. See H. L. A. Hart, 'Positivism and the Separation of Law and Morals', reprinted in *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press, 1983), pp. 49–87. For the thinner definition see John Gardner, 'Legal Positivism: 5 1|2 Myths', *American Journal of Jurisprudence* Vol. 46 (2001), p. 201.

others that his legal theory demonstrates the limitations of the natural law/legal positivism dichotomy, and still others that he is best regarded as a divine command theorist.[10] In this section I concentrate upon the first of these rival interpretations, which sets out from the clear evidence in Hobbes' work of a commitment to something akin to thesis (2). Theses (1) and (2), I contend, represent two dimensions in Hobbes' political theory that are not irreconcilable, but undoubtedly difficult to harmonise. Along the first dimension, Hobbes responds to the lack of certainty and agreement in the moral and political domains by postulating that publically ascertainable commands of the sovereign are the sole condition on the existence and validity of law. Along the second dimension, Hobbes seeks in the laws of nature a normative basis for the justification of authority relations. It is Hobbes' commitment to the co-extensiveness of natural and civil law – insofar as the commands of the sovereign provide the definitive interpretation of the laws of nature – that allows these two dimensions to be brought into an uneasy harmony.

The evidence for the natural law interpretation of Hobbes has been ably summarised by Mark C. Murphy on the basis of the evidence supporting thesis (2) and Hobbes' 'deviant' uses of the term obligation.[11] Murphy's analysis suggests that Hobbes' mechanistic account of our self-interested psychological motivations and conventionalist account of obligation are both ill-suited to provide a normative justification for our moral obligation to establish and obey the laws of sovereign authority. This is where the first law of nature enters the picture: 'every man ought to endeavour Peace, as farre as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages Of Warre.'[12] The first

[10] For Hobbes as a 'latter-day Thomas Aquinas' see Mark C. Murphy, 'Was Hobbes a Legal Positivist?', *Ethics*, Vol. 105, No. 4 (1995), pp. 846–873. See also the interpretation of Hobbes as a 'self-effacing' natural law theorist – discussed in more detail below – in S. A. Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature* (Cambridge: Cambridge University Press, 2009), pp. 265–294. For Hobbes as an anti-positivist concerned to give an account of legitimacy of legal order and the constraints of the rule of law see David Dyzenhaus, 'Hobbes and the Legitimacy of Law', *Law and Philosophy* 20 (2001), pp. 461–498. For a reading of Hobbes' *Leviathan* that places in question his status as a positivist on religious grounds see A. P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press, 1992).

[11] See Mark C. Murphy, 'Was Hobbes a Legal Positivist?' (1995); Mark C. Murphy, 'Deviant Uses of Obligation in Hobbes' *Leviathan*', *History of Philosophy Quarterly* 11:3 (1994), pp. 281–294; footnotes 4–8 above. Murphy's identification of Hobbes' recourse to natural law arguments (of both a rationalistic and voluntaristic variety) in his explanations of political obligation is particularly instructive, insofar as such recourse may be regarded as a 'forced move'.

[12] Thomas Hobbes, *Leviathan*, p. 64.

law of nature, upon which the other laws of nature are based, presents self-preservation not simply as a descriptive psychological fact about our desires, but as a normative claim and basic reason for action, i.e. that it is *desirable* to escape the worst evil of death. Broadly consistent with traditional natural law assumptions about the relation between reason and motivation, this notion of self-preservation as a basic reason for action is much better suited to provide justificatory force to Hobbes' account of law's authority than his mechanistic psychology, insofar as it gives us an inherently normative reason why we should seek to escape the state of nature and establish a commonwealth based on principles of order.[13] What Murphy's account does not fully explain, however, is how such commitments are reconcilable with Hobbes' unequivocal commitment to thesis (1). Murphy states that the view that Hobbes is a legal positivist derives from the weakness of the restraint that the natural law places on a sovereign's commands. This is certainly suggestive of a reconciliation, but does not directly address the clear assertion that sovereign command is sufficient to establish the civil law.[14]

In this context, Michael Sevel has recently suggested that the apparent irreconcilability of the theses can be overcome by regarding Hobbes as an epistemic legal positivist and a metaphysical natural law theorist.[15] According to Sevel, Hobbes is an epistemic legal positivist insofar as he thinks that the commands of the sovereign should be promulgated in such a way that it is unnecessary for a subject to engage in moral evaluation of the content of those commands in order to identify the law.[16] In this respect, Hobbes can be found to offer an account of civil law consistent with Hart's separation and identification theses. Sevel's Hobbes, however, is

[13] Such an account need not contradict Hobbes' identification of good and evil with our appetites and aversions (discussed below). As Darwall suggests, Hobbes' account of good is consistent with a projectivist view whereby we experience survival as a good to be pursued from a first-person perspective, even though such ethical and normative thought or discourse is ultimately a projection of our desires. See Stephen Darwall, 'Normativity and Projection in Hobbes' Leviathan', *Philosophical Review* Vol. 109, No. 3 (2000), pp. 313–347.

[14] Mark C. Murphy, 'Was Hobbes a Legal Positivist?', p. 872.

[15] Michael Sevel, 'Hobbes: Patriarch of Legal Positivism, or Reinventor of Natural Law?', in Sharon A. Lloyd (ed.), *The Continuum Companion to Hobbes* (London: Continuum, 2012).

[16] Hobbes definition of civil law is certainly suggestive of this interpretation: 'to every subject, those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of, for the distinction of right, and wrong; that is to say, of what is contrary, and what is not contrary to the rule'. Hobbes of course famously defined command as 'where a main saith, do this, or do not this, without expecting other reason than the will of him that says it'. Thomas Hobbes, *Leviathan*, pp. 137 and 132.

simultaneously a natural law theorist from a metaphysical perspective. This is because, at the level of a general jurisprudence, he asserts an 'intimate relation between the very existence of law and an obligation to obey the law on the part of its subject ... in virtue of the interdependent relationship between the natural and civil law.'[17] The idea here is that, as suggested above, Hobbes' laws of nature provide a genuinely normative basis for civil laws and place moral constraints on the sovereign's decision-making powers.

Whilst Sevel's general point that Hobbes' political thought incorporates elements of both positivism and natural law jurisprudence is sound, it is not apparent that the epistemic/metaphysical distinction altogether resolves the tension identified between theses (1) and (2). If Hobbes may be considered a natural law theorist from a metaphysical perspective, then this seems to suggest less that he reconciles positivism and natural law commitments, as that he is a natural law theorist who adheres to a robust theory of sovereign authority due to a heightened awareness of our limited epistemic capacities to access difficult metaphysical truths. This decides the issue in favour of the natural law interpretation, albeit with an important qualification. Yet, even apart from the doubtful plausibility of ascribing to Hobbes a substantive rather than projectivist theory of human goods, his statements on political authority seem to entail a stronger advocacy of the separation thesis than the claim that the law must be readily identifiable to be valid. The passages cited above quite unambiguously assert that sovereign command is sufficient for the existence and validity of civil law and hence seem to entail that the conditions for civil law are independent of moral truth.

A partial resolution of this tension can be found in what Kavka coined the 'mutual containment thesis,'[18] namely the claim that 'the laws of nature, and the civil law, contain each other, and are of equal extent.'[19] This claim, which occurs in the context of a discussion of the relationship between political authority and the validity and existence conditions for civil law, suggests that the prescriptions articulated in the laws of nature only attain the status of valid civil laws subsequent to the institution of an artificial sovereign who lays

[17] Sevel, 'Hobbes: Patriarch of Legal Positivism, or Reinventor of Natural Law?', p. 7.

[18] Gregory S. Kavka, *Hobbesian Moral and Political Theory*, pp. 248–254.

[19] Thomas Hobbes, *Leviathan*, p. 138.

down such laws in definitive and canonical form. Promulgated sovereign command is obviously a necessary condition for civil law, but it is also understandable why Hobbes would imply it is sufficient given that the laws of nature are both immutable and also broad enough to admit of multiple interpretations about how best to promote self-preservation. The laws of nature do place a broad moral constraint on sovereign authority, but it is only through the commands of sovereign authority that a determinate interpretation of those laws in the form of positive civil laws is introduced.[20] It is in this sense that the law is simply what the sovereign commands: it is the civil law that makes the laws of nature *operative*.

The consistency of this reading with Hobbes' wider political philosophy can be seen in its fit with the crucial distinction between *in foro interno* and *in foro externo* obligations to obey the laws of nature.[21] The force of the distinction is that one is only obligated to follow an internal disposition to follow the law of nature regarding the establishment of covenants for the sake of peace under external conditions where one is sufficiently assured that others will do the same. Ultimately, then, the commands of authority are subordinate, from a normative point of view, to the good of self-preservation, but it is such commands that establish the conditions under which such self-preservation can actually be realised. There is thus a natural law constraint upon political obligation, but such a constraint is satisfied just in case the sovereign is better able to provide protection of the welfare of subjects than would be the case in the state of nature. Given the horrors of the state of nature, this condition is not hard to satisfy. Hobbes is what Gardner has labelled a 'value-positivist,' insofar as he regards the stabilising role of civil law – any civil law that meets the broad moral constraints of the laws of nature – as meritorious, whatever its other defects.[22]

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[20] My interpretation here is consistent with Lloyd's attribution to Hobbes of a 'self-effacing' natural law theory; self-effacing in the sense that the natural law imposes a duty to treat the positive law promulgated by the sovereign as authoritative. As Lloyd argues, if 'we understand the sovereign to be the authoritative arbiter of all disputes, it follows that she may legitimately settle disputes as to what the law – including natural law – is, how it is properly interpreted ... whether she has or has not exceeded its legitimate authority, and the like'. Lloyd, *Morality in the Philosophy of Thomas Hobbes*, p. 280. My interpretation differs from that of Lloyd, however, in regard to whether Hobbes has the normative resources at his disposal to achieve this reconciliation in a convincing manner. I return to this point in Sect. III.

[21] *Ibid.*, p. 79.

[22] John Gardner, 'Legal Positivism: 5 1|2 Myths', p. 205.

It still remains unclear, however, whether the obligation referred to in this context is that suggested by Hobbes' incorporation of a natural law conceptual framework or the more conventionalist version implied by his official definition in terms of self-imposed constraints.[23] Another way to put the same point is that the claim that the laws of nature only attain the status of valid civil laws following the institution of an artificial sovereign who lays down such laws in definitive and canonical form could entail either of the following:

a. The normative force of the laws of nature only becomes operative following their authoritative interpretation by the sovereign.
b. The normative force of the laws of nature is only operative in the form of civil law following an authoritative interpretation by the sovereign.

The second interpretation suggests a more robust natural law construal than the first, insofar as the normative force of the laws of nature is operative before the commonwealth-establishing covenant, even if it does not create genuinely binding obligations. It may be argued that the distinction between obligations *in foro interno* and *in foro externo* does not resolve this equivocation; it rather compounds it by postulating an inherently ambiguous form of obligation in the state of nature.

In any case, on either interpretation recognition of the role 'mutual containment' plays in Hobbes' account of political authority allows for a deeper explanation of his extreme-sounding statements on the authority of the sovereign to decide what doctrines are taught within a commonwealth. The claim that '[a]ll judgement therefore in a city belongs to him who hath the swords, that is, to him who has the supreme authority,'[24] is not simply an expression of the need to remove all ambiguity from the political realm in a time of violent moral and religious dispute, it expresses a core conceptual commitment of Hobbes' system, namely the need to consolidate theoretical and practical authority in one source insofar as the sovereign provides the definitive interpretation of the laws of nature. It is, that is to say, necessary for Hobbes to identify civil law with the natural reason of the Sovereign in order to establish the thesis that the

[23] Thomas Hobbes, *Leviathan*, p. 79.
[24] Thomas Hobbes, *De Cive*, p. 74.

natural law and civil law are but 'different parts of Law; whereof one part being written, is called Civill, the other unwritten, Naturall.'[25]

R. B. Friedman once traced the conceptual distinction between someone being in a position of authority ('in authority') and someone being a theoretical authority ('an authority') to Hobbes.[26] Being 'an authority' generally rests on inequality in the sense of entailing an epistemic assumption of superior insight and knowledge about a particular state of affairs. A person being 'in authority,' by contrast, does not presuppose an inequality antecedent to the authority relation itself; indeed it seems to presuppose a level of formal equality. If no single agent can persuade others that his judgment is superior, then there is an increased need, from the point of view of stability and security, for someone to be 'in authority.' In this sense, someone being 'in authority' is suggestive of dissociation from a background of common traditions and shared beliefs or at the very least a desire to overcome the violence and disorder caused by competing belief systems. Friedman's analysis of practical authority seems to map neatly onto Hobbes' account of the artificial nature of authority relations in Book 13 of *Leviathan* on the natural condition of mankind. Hobbes begins the chapter by arguing for the basic equality of men in the state of nature on the grounds that differences of strength and intelligence are not so great as to protect the strongest man whilst sleeping or confirm the high estimation that each places upon his own wisdom.[27] There is also a significant sense, however, in which Hobbes runs together the two kinds of authority through his thesis that the sovereign power provides the definitive interpretation of the moral law. Hobbes' statement that 'the Authority of writers, without the Authority of the Commonwealth, maketh not their opinions Law, be they never so true ... it is by the Soveraigne Power that it is Law' needs to be read in this context.[28] Whilst Hobbes' theory of sovereignty is hostile to common law and rules out the

[25] Thomas Hobbes, *Leviathan*, p. 138. See also Sean Coyle, 'Thomas Hobbes and the Intellectual Origins of Legal Positivism', *Canadian Journal of Law and Jurisprudence* 16:2 (2003), pp. 243–270.

[26] R. B. Friedman, 'On the Concept of Authority in Political Philosophy' (1973), in Joseph Raz (ed.), *Authority* (New York: New York University Press, 1990), pp. 56–91. Someone is 'in' a position of authority if they occupy 'some office, position or status which entitles him to make decisions about how other people should behave'. A person is 'an authority', by contrast, insofar as they express utterances or beliefs that are entitled to be believed. See pp. 77–85.

[27] Thomas Hobbes, *Leviathan*, pp. 60–61.

[28] *Ibid.*, p. 143. This sentiment is more concisely formulated in Chap. 26 of the Latin version of *Leviathan* as *auctoritas non veritas facit legem.*

possibility of a subject appealing to disputable moral truths in order to challenge the civil law,[29] the notion of moral truth appears to remain operative in his account insofar as the commands of the sovereign may be taken to provide a definitive and binding interpretation of the laws of nature.

Hobbes' command theory of political authority addresses the need for an unambiguous source of law, whereas his appeal to the laws of nature addresses the normative deficit that arises from a crude command-theory played out solely at the descriptive level. These two dimensions are moreover partially reconcilable by acknowledging the role that the sovereign authority plays in rendering the moral law operative within the domain of social and political action. As I shall suggest in the next section, the fundamental tension underlying Hobbes' political thought is not that between positivism and natural law jurisprudence, but rather between a constructive account of political authority which identifies de facto and legitimate authority and an account which seeks a minimal content of natural law in self-preservation and thereby relies on at least one basic moral truth.

III. AUCTORITAS NON VERITAS FACIT LEGEM

The weak restraint Hobbes places upon sovereign command through the laws of nature renders problematic the provision of an adequate normative basis for legitimate political authority and thus tends towards an identification of legitimate with *de facto* authority. Arguably a deeper tension in Hobbes' theory of authority emerges, however, in his attempted reconciliation of positivistic and natural commitments through the mutual containment thesis. The partial reconciliation effected through the claim that sovereign command provides a definitive interpretation of the laws of nature remains problematic from a normative perspective insofar as it seems to depend upon the capacity of practical reason to access at least one basic moral truth; namely, the universality of the desire for self-preservation as a decisive reason for action in the political domain. This dependence seems, however, to conflict with Hobbes' official statements on the scope of

[29] This is stated most clearly in Hobbes' posthumously published (1681) dialogue on the common law. See Thomas Hobbes, in Joseph Cropsey (ed.), *A Dialogue Between a Philosopher and a Student of the Common Laws of England* (Chicago: University of Chicago Press, 1997), pp. 57–77.

practical reason and truth. A consideration of the conceptual and historical presuppositions of Hobbes' construal of authority relations as artificial and assertion of the need to separate authority and truth within the domain of politics can shed light on this tension. I begin this section by considering the epistemic and jurisprudential preconditions of Hobbes' constructivist account of political authority. I then consider S. A. Lloyd's attribution to Hobbes of a meta-normative theory of reciprocity that is capable of effecting a reconciliation of his natural law and positivist commitments. This frames my argument that Hobbes' instrumental account of practical reason and nominalist theory of truth ultimately compromise his attempted reconciliation of positivism and natural law commitments by undermining the normative status of authoritative directives as decisive reasons for action.

From an epistemic perspective, Hobbes' account of authority relations needs to be situated within the more pervasive critique of traditional sources of authority characteristic of early modernity. Descartes' rejection, in the *Discourse on Method* (1637), of the authority of the senses, scholasticism, ancient texts and his teachers may be regarded as exemplary of this tendency. Hobbes shared with Descartes a suspicion of the theoretical authority of Aristotle, Aquinas and the philosophy of the Catholic Church and wanted to provide a firm scientific foundation for morals in an intellectual environment of scepticism.[30] Hobbes' acceptance of the relativity of moral properties implies in particular the rejection of the Aristotelian conception of the final good or *summum bonum* 'spoken of in the Books of the old Morall Philosophers.'[31] What happiness there is in this life is the temporary fulfilment of the ever restless movement of desire, which constantly seeks different objects, meaning that 'these words of Good, Evill, and Contemptible, are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common Rule of Good and Evill, to be taken

[30] Note, for example, the echo of Montaigne in Hobbes' statement 'that copulation which in one city is matrimony, in another will be judged adultery'; at the end of the same passage Hobbes declares that 'what therefore theft, what murder, what adultery, and in general what injury is, must be known by the civil laws, that is, the commands of him who hath the supreme authority'. Thomas Hobbes, *De Cive*, pp. 82–83. I am indebted to Richard Tuck on this point. See Richard Tuck, 'Introduction' to Thomas Hobbes, *Leviathan*, p. xv.

[31] Hobbes, *Leviathan*, p. 47.

from the nature of the objects themselves.'[32] Such a view of the relation between desire and the good is an important part of the rationale for an artificial sovereign authority who can univocally determine moral and political truth in the absence of unanimity.

From a jurisprudential perspective, Hobbes' work may be taken as exemplary for two early modern tendencies in regard to the legitimation of law. The first is from theologically determined truth (*veritas*) to secularised will (*voluntas*), the second from eternal law to historically contingent positive law.[33] As a result of these tendencies, which are obviously closely linked with the Protestant reformation and subsequent bloodshed, there is in the sixteenth and seventeenth centuries generally speaking not only a decline in the influence of the Christian element in the justification of law, but also an increasing reluctance to regard 'truth' and 'justice' as defining characteristics of positive law.[34] Hobbes' theory of political authority thus needs to be read in the context of the rise of the modern nation state and the associated shift in the legitimation of political power. One particularly significant development pertains to the meaning of the concepts of authority and power.

The early modern development I have in mind, which Hobbes did not initiate but certainly furthered, is an erosion of the conceptual distinction between authority and power. Bodin's *Les Six livres de la République* (1576) is perhaps the first clear example of this increased convergence between the Roman terms *auctoritas* and *potestas*.[35] In Roman law the term *auctoritas* designates the peculiar prerogative of the Senate to provide authoritative advice to the magistrates or holders of political power, a form of advice captured by Mommsen

[32] Hobbes, *Leviathan*, p. 24. Hobbes later remarks: 'Nay, [even] the same man, in divers times, differs from himself; and one time praiseth, that is, calleth good, what another time he dispraiseth, and calleth evil: *from whence arise, disputes, controversies, and at last war*'. *Ibid.*, pp. 79–80.

[33] Michael Stolleis, 'The Legitimation of Law through God, Tradition, Will, Nature and Constitution', in Lorraine Daston and Michael Stolleis (eds.), *Natural Law and the Laws of Nature in Early Modern Europe: Jurisprudence: Theology, Moral and Natural Philosophy* (Surrey: Ashgate, 2008), p. 49. Stolleis cautions that these tendencies, whilst clearly operative in the early modern period, should not be regarded as forming a clear linear development. See also in this regard Gerald J. Postema, 'Law as Command: The Model of Command in Modern Jurisprudence', *Philosophical Issues*, 11 (2001), p. 474.

[34] Hobbes articulates this refusal in his definition of civil law as 'the orders of those who have supreme authority in the State in respect to the future actions of citizens'. Thomas Hobbes, *De Cive* (New York: Appleton Century, 1949), p. 75.

[35] My analysis in this paragraph draws in particular on Jesus Fueyo, 'Die Idee des 'Auctoritas': Genesis und Entwicklung', in Hans Barion, Ernst-Wolfgang Bockenforde, and Ernst Fortshoff (eds.), *Epirrhosis: Festgabe für Carl Schmitt* (Berlin: Duncker & Humboldt, 1968); Alvaro d'Ors, 'Auctorita-authentia-authenticum. Homenaje, al Prof. Fernandez-Galiano', *Estudios Clasicos* 88 (1984), pp. 375–381.

in the memorable formulation 'less than an order and more than a counsel.'[36] The notion of *auctoritas* here retains a strong etymological connection with augmentation, suggesting a dependence upon a prior foundation of truth. The terms *potestas* and *imperium*, by contrast, designate the political power deriving from the will of the people and manifested in the form of commands. This distinction between authority and power is maintained in the medieval world, vividly represented by the practice of the inauguration of political power by the ecclesiastical authority of the pope.[37] Hobbes' blurring of the concepts of *auctoritas* and *potestas* perhaps finds clearest expression in Chap. VI of Part 2 of *De Cive*, where 'supreme power,' 'chief command' and 'supreme authority' are employed interchangeably. In articles 7–12, Hobbes extends the authority of the supreme power within a commonwealth to 'judge what opinions and doctrines are enemies unto peace' and attributes the prevalence of civil war in the Christian world to failure to adopt this principle of dominion.[38] Hobbes' notion of authority, in contrast to the Roman concept of *auctoritas*, sets out from the assumption of the lack of a pre-existing moral order, with the emphasis shifting to the will of the supreme commander.

Hobbes' depiction of authority relations as artificial reflects a lack of belief in the existence of substantive pre-conventional goods, regarded as sources of moral truth.[39] In the introduction to *Leviathan*, Hobbes characterises the commonwealth as an artificial animal animated by the artificial soul of the sovereign. Perhaps the most striking assertion of the introduction, however, is the comparison of the pacts and covenants establishing the commonwealth with the fiat of God at Creation.[40] This passage not only reflects Hobbes' adherence to a command theory of law, it also illuminates the conventionalist or constructivist aspect of the Hobbesian project to establish a decision procedure that pre-empts conflicting compre-

[36] Theodor Mommsen, *Römisches Staatsrecht Volume 3*. Reprint (Graz: Akademische Druck, 1969), p. 1034.

[37] It is of course not possible to do justice to the complexity of the relationship between *auctoritas* and *potestas* in medieval political thought here. See Joseph Canning, *A History of Medieval Political Thought 300–1450* (London: Routledge, 1996) for an overview of the issues at stake.

[38] Thomas Hobbes, *De Cive*, p. 76.

[39] An intriguing exception to Hobbes' tendency to view authority relations as artificial is his thesis that a mother naturally has authority over their child. See Thomas Hobbes, in J. C. A. Gaskin (ed.) *Human Nature and De Corpore Politico* (Oxford: Oxford University Press, 1994), p. 130.

[40] *Ibid.*, pp. 1–2.

hensive doctrines and beliefs about truth and justice.[41] The artificiality of political authority also explains Hobbes' voluntaristic theory of authorisation central to his account of the role of sovereign power. When Hobbes defines authority in *Leviathan* as 'a Right of doing any act,'[42] the basis of this definition is his distinction between authors and actors. An actor is entitled to act on behalf of those who have authorised them with a right. Insofar as the dissociated individuals of the state-of-nature can authorise the sovereign with the right to act on their behalf through a transfer of natural rights, a disconnected people becomes a political unity. The sovereign is authorised to act on the rights of subjects in order that he may secure 'their Peace and Common Defence.'[43] Consistent with the claim that it is authority, and not truth, which makes the law, this suggests that authority emanates from a decision, or act of the will, ultimately attributable to the rights of individuals. The transfer of the natural right of each through an act of authorisation thus abstracts from traditional and customary sources of authority relations in favour of an account based on the rights of the individual and motivated by rational self-interest.

If we shift the focus from Hobbes' account of civil law to the normative justification of political authority, however, it quickly becomes apparent that a purely constructive interpretation of authority relations will struggle to explain why sovereign commands provide reasons for action that we are morally obliged to obey. It is in this context that Lloyd (2009) has attempted to construct an interpretation of Hobbes that attributes to him a meta-normative theory based on what she calls the reciprocity theorem of reason. The reciprocity theorem, which sets out from the definition of man as a rational animal, is formulated by Lloyd as follows:

> If one judges another's doing of an action to be without right, and yet does that action oneself, one acts contrary to reason ... That is, to do what one condemns in another is contrary to reason.[44]

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[41] For an excellent discussion of this point see Jan Schröder, 'The Concept of (Natural) Law in the Doctrine of Law and Natural Law of the Early Modern Era', in Lorraine Daston and Michael Stolleis (eds.), *Natural Law and the Laws of Nature in Early Modern Europe: Jurisprudence, Theology, Moral and Natural Philosophy*, p. 63f.

[42] Thomas Hobbes, *Leviathan*, p. 81.

[43] *Ibid.*, pp. 87–88.

[44] Lloyd, *Morality in the Philosophy of Thomas Hobbes*, p. 220. Italics removed. Lloyd derives the theorem as the conclusion of an argument on the basis of premises drawn from passages across Hobbes' work. *Ibid.*, pp. 219–220.

Lloyd's argument is that the reciprocity thesis is the ultimate normative support for Hobbes' claim that we have a duty, as rational agents, to submit to the directives of the sovereign. On this reading, the reciprocity theorem is the sum of the laws of nature, which provide the normative support for the reasonableness of establishing and maintaining sovereign authority.[45] The idea is that we would judge it unreasonable for others to retain their right to private judgement concerning their reasons for action if this was to result in perpetual conflict. As a result, our only reasonable alternative as rational agents given the obtaining of the reciprocity theorem is to give up our private right of judgement over our reasons for action and engage in joint submission to authoritative decision.[46]

Lloyd's interpretation thus seeks to challenge the traditional reading of Hobbes as a psychological egoist by constructing a solid meta-normative basis for his justification for the authority of law. Whilst Lloyd acknowledges the concern that this involves the attribution to Hobbes of a proto-Kantian account of normative agency and the universality of moral norms, she nonetheless maintains that the reciprocity theorem provides a kind of 'moral minimum' or weak universality constraint on reasonable action.[47] The difficulty with this – as an interpretation of Hobbes rather than a reconstructive account of what Hobbes should have said – is the absence in his work of a substantive conception of practical reason and reasons for action that would allow the reciprocity theorem to generate a normative justification for political authority that goes beyond the rational concern for self-preservation. It is indeed plausible that it is precisely this absence that leads Hobbes to supplement his voluntaristic command account of obligation with the requirement that one not engage in reasoning that is self-contradictory.[48] The more important point, however, as I suggest in what follows, is that whilst this consistency requirement, and Hobbes' commitment to the claim that man is a rational animal, certainly allow for the kind of proto-Kantian reconstruction of Hobbes proposed by Lloyd,

[45] *Ibid.*, pp. 273 and 275.

[46] *Ibid.*, pp. 213–214.

[47] *Ibid.*, p. 228. See also p. 230: '[W]hile his theory falls short of demanding Kantian universality, its requirement of consistency in judgement universally across all judgements falling under a description does invoke a requirement appropriately describable as a weak universality requirement'.

[48] Thomas Hobbes, *Leviathan*, Chap. 14. See also Thomas Hobbes, *De Corpore Politico* (1650), part 1, Chap. 3.

neither principles of logical consistency nor principles of reciprocity are sufficient to provide an adequate normative justification of political authority in the absence of a more substantive theory of practical rationality or reasons for action.

It is Hobbes' scepticism about the capacity of practical reason to access substantive goods, and not just his mechanistic account of moral psychology, that makes it difficult for him to provide a normative justification of the law's authority. As we saw in Sect. II, Hobbes attempts to resolve this concern by regarding self-preservation as a natural good. The status of this natural good is, however, given Hobbes' account of the relationship between desire and the good, somewhat ambivalent. There is no *summum bonum*, but there is a *summum malum*, namely, death. Even the *amour-propre* of man, his tendency to glory, or to wish to glory, in his superiority to others, is subordinated to the desire to avoid death, insofar as the loss of life is such that 'no salve is sufficient.'[49] The desire to avoid death thus serves as a non-conventional good shared by all agents, despite Hobbes' relativistic account of human goods. This non-conventional good is employed to justify the rationality of agents forming together to create an artificial commonwealth that can guarantee their peace and security, whilst also allowing the sovereign to be bound to the fundamental law of nature that cannot be abrogated by any commonwealth or sovereign.[50]

Even if we support this role of self-preservation with a proto-Kantian reciprocity theorem, however, Hobbes evidently has fewer resources at his disposal to carry out the work of normative justification than a traditional natural law theorist like Aquinas. For Aquinas the law is regarded as a rational standard for conduct where this thesis applies to both the eternal law and the civil law, which is deduced or determined on the basis of our rational participation in the eternal law.[51] Even without entering into the question of Aquinas' teleological understanding of nature and so-called intellectualist interpretation of the relation between reason and the will, it is evident that this conception of law as providing a rational standard of conduct on the basis of the eternal law entails that the normative force of civil law derives from a form of order that transcends any

[49] Thomas Hobbes, *Leviathan*, p. 49.

[50] *Ibid.*, p. 169.

[51] ST IaII 90, 1–4.

arbitrary human decision or willing. Hobbes, by contrast, needs to generate normativity from an account of human government and law conceived primarily in voluntaristic terms as a construction of human artifice, albeit a construction precipitated by a rational and natural concern with self-preservation.

The most obvious difficulty with an account of political authority grounded in the good of self-preservation is that the reason for which people resolve to authorise a sovereign can turn out not to be promoted by that sovereign. Hobbes of course, and as stated above, places a series of limitations on the absolute power of the sovereign, limitations which reflect the motivations (avoidance of death) that men had to establish the commonwealth in the first instance. The problem of the normative ground of obligations remains, however, and this is perhaps best captured in Hobbes' own thesis that all obligations are self-imposed.[52] Given that the source of legitimacy is the will of dissociated individuals, the question presents itself of how, from a normative point of view, it is possible to justify why contracts cannot be broken and the social covenant not revoked by an agent.[53] If commands have no normative force beyond someone's say so, then their status as genuine reasons for action is compromised.[54] On the other hand, even the principle that one should not engage in reasoning which violates norms of rational consistency is vulnerable on the assumption of the priority of self-preservation as the overriding reason for action.

The force of this concern regarding the obligation to obey political authority can be seen in Ladenson's contemporary defence of Hobbes. Ladenson argues that the right to rule of governmental authority is a justification right based upon the assumption that rational people under a veil of ignorance would accept the need for coercion to establish social stability.[55] The difficulty with this solution to the problem of political obligation is particularly evident in Sartorius' development of Ladenson's view, which claims that the bearer of political authority has a moral justification-right to use

[52] Thomas Hobbes, *Leviathan*, p. 111.

[53] Hence the centrality of Hobbes' response to 'the Foole' (who denies that it always in our self-interest to act justly) in discussions of his political thought. See Thomas Hobbes, *Leviathan*, p. 72.

[54] Hence the paradoxes of political authority made famous by R. P. Wolff. See R. P. Wolff, *In Defence of Anarchism* (New York: Harper and Row, 1970).

[55] Robert Ladenson, 'In Defense of a Hobbesian Conception of Law', *Philosophy and Public Affairs*, Vol. 14, No. 1 (1985), pp. 134–159.

coercion against a subject and a claim-right not to be usurped, whilst at the same time denying that the subject of authority has a moral obligation to abstain from actions that are outlawed by that authority.[56] The tension at the core of this picture of obligation derives from the fact that the authority of the law ultimately stems from the individuals who are subject to that authority without explicit reference to reasons for action explaining the intelligibility of authority relations beyond the desire for self-preservation. It is the assumption that our obligations to authority ultimately derive from an act of our own will that makes it difficult to explain why, from the point of view of rational self-interest, there would not be circumstances in which the obligation could simply be revoked.

It is instructive to trace the problematic normative status of Hobbes' laws of nature to his accounts of the relation between desire and the good and practical reason. The most plausible way to take Hobbes' theory of the normativity of natural law, in the absence of the sorts of assumptions about teleology and practical reason found in a thinker like Aquinas, is to regard it as a projectivist account whereby ethical and normative claims are projections or expressions of our desires and sub-rational motivations.[57] On this account, however, Hobbes is committed to a view of human good according to which something is good because we desire it, not that we desire something because it is good. This tends to reduce normative claims to desire-belief pairs, i.e. a sub-rational desire and a theoretical belief about the best way to attain a good previously identified by that sub-rational desire. This is indeed consistent with Hobbes' official definition of reason in terms of 'Reckoning (that is, Adding and Subtracting) of the Consequences of generall names agreed upon' and instrumentalist characterisation of thoughts as scouts and spies of the desires.[58] Now such a proto-Humean theory of practical reason and motivation not only seems ill-equipped to get us to any strong normative theses about the authority of law, it also sits uneasily with the view of human goods and practical reason generally associated with the mainstream of natural law thought.

[56] Rolf Sartorius, 'Political Authority and Political Obligation', *Virginia Law Review* 67, pp. 3–17; Rolf Sartorius, 'Positivism and the Foundations of Legal Authority', in R. Gavison (ed.), *Issues in Contemporary Legal Philosophy: The Influence of H.L.A. Hart* (Oxford: Oxford University Press, 1981), pp. 43–61.

[57] See Stephen Darwall, 'Normativity and Projection in Hobbes' Leviathan', pp. 314–318.

[58] Thomas Hobbes, *Leviathan*, pp. 18 and 35.

The dilemma can be viewed from another angle by considering the debate between Murphy and John Deigh over the status of the laws of nature.[59] Deigh's contention is that the laws of nature are scientific statements based upon reasoning about customary usage, rather than expressions of means-end thinking. As Murphy says, this interpretation seems to overlook that the laws of nature are clearly stated by Hobbes to have normative force, whereas on Deigh's reading they would be normatively inert. This debate is instructive, because Deigh and Murphy are grappling with what seems to be the following tension in Hobbes' account. One reason why Hobbes might have been inclined to regard the laws of nature as theoretical precepts is to avoid the implication that our practical rationality is capable of grasping goods in the traditional natural law sense, as this would be inconsistent with his instrumentalist account of reason and subjectivist or projectivist account of moral truth. This is to suggest that the laws of nature are framed in such a way that they appear as theoretical or scientific statements (theorems) about what we should do if we want to preserve our life. On such an account it is the desires that motivate us to pursue the means to the goods that are encapsulated in the principles; as stated above, something is good because we desire it, not desirable because it is good. As Hoekstra has argued, reason is not divorced from desire in Hobbes, but rather arises from it.[60] Hobbes' view of practical reason, then, seems to be more easily aligned with a Humean account than a Kantian or natural law one. On the other hand, Hobbes' overarching intention, in terms of his political thought, is to establish an ultimate source of authority. But the normative force required for such an argument does not seem as if it could be forthcoming on the basis of a mechanistic account of desire; all that such an account seems capable of producing is that we should follow the commands of a sovereign authority when it is in our best interests.

If Hobbes, as his explicit statements on the scope of reason in the practical sphere suggest, is indeed committed to a proto-Humean conception of practical reason, then this has some problematic

[59] See John Deigh, 'Reason and Ethics in Hobbes's Leviathan', *Journal of the History of Philosophy* 34 (1996), pp. 33–60; Mark C. Murphy, 'Desire and Ethics in Hobbes's Leviathan: A Response to Professor Deigh', *Journal of the History of Philosophy* 38 (2000), pp. 259–268; John Deigh, 'Reply to Mark Murphy', *Journal of the History of Philosophy* 41 (2003), pp. 97–109.

[60] Kinch Hoekstra, 'Hobbes on Law, Nature, and Reason', *Journal of the History of Philosophy* 41 (2003), pp. 111–120.

consequences regarding not only the thesis that he is genuinely a natural law theorist, but also in relation to the capacity of the laws of nature to generate sufficient normativity to justify political authority more generally. A reason that is a slave to desire can indicate the best way to satisfy some of one's desires, but it is hard to see how it can give reasons for action in the normative sense. Reason, that is, can teach us how to satisfy our desires or passions, but cannot tell us whether those desires or passions are rational. Reason accordingly has no rational authority over desires, as seems clear from Hume's claim that it is no more rational to will the destruction of the world than the scratching of one's finger.[61] The Humean position thus seems to reduce to the following dilemma in relation to normativity. Either reason simply identifies the best instrumental way to satisfy one's desires, but gives no genuine reasons for action. Or, alternatively, we can think of instrumentalism as normative, i.e. as telling us that we should take the most efficient means to the desired end. But the source of this normativity is not only quite mysterious, it seems to embody an attempt to derive an 'ought' from an 'is.' Ultimately, then, the account of practical reason found in Hobbes' work rules out the attribution to him of a natural law theory in any robust traditional sense. This is not to deny the existence of materials in Hobbes' work that point in the direction of Lloyd's weak universality requirement, just to acknowledge that the overarching tendency of his work is to undermine the capacity of practical reason to access substantive human goods. One significant problem which Hobbes' political philosophy hands down to modernity is thus how authority can be legitimate when its normative force is ultimately a function of self-interested human desire.

The second related problem for a Hobbesian account is the role of truth in politics. Hobbes' claim that it is authority, and not truth, that makes the law, can be taken in a straightforward sense as prescribing a clear demarcation of practical and theoretical authority to resolve moral and religious conflict. This demarcation reflects the impossibility of definitively refuting moral scepticism and the difficulty of resolving disputes over comprehensive doctrines on the human good. As we have seen, however, Hobbes' 'mutual containment' thesis suggests that the sovereign's practical authority is associated

[61] David Hume, in L. A. Selby-Bigge and P. H. Niditch (eds.), *A Treatise of Human Nature*, 2nd Edn (Oxford: Clarendon Press, 1978), 2.3.3.6.

with his capacity to establish a definitive interpretation of the laws of nature. When combined with Hobbes' nominalist philosophy of language, such a position seems to suggest a constructivist and robustly anti-realist account of truth according to which the sovereign will literally establishes what is truth within a commonwealth.[62] On the other hand, Hobbes' appeal to right reason and the laws of nature would seem to presuppose a more substantive account of truth, insofar as the sovereign is constrained by principles of self-preservation that transcend particular linguistic conventions.[63] Indeed, as I shall argue in concluding this paper, Hobbes' artificial account of authority relations requires at a minimum an appeal to consensus-based truth.

Understanding the utterances of another, even when such utterances express truth claims which conflict with our own, presupposes not only a common language, but also a common store of shared beliefs. Successful communication depends upon this shared framework, because we cannot know what people mean without the attribution to them of holding certain sentences true, and we cannot know what someone holds to be true without attributing to them certain beliefs. It is only within the context of an underlying level of commonality of belief that meaningful disagreement makes sense. If we are to consider political authority as a normative notion, then this presupposes a shared framework of beliefs and (defeasible) claims to truth embodied in language as a social practice. These claims to truth in turn cannot be divorced from reasons that people have for forming beliefs. Whilst it is certainly the case that with political authority reasons for action can come apart from reasons for belief, they can never be altogether divorced from such reasons.[64] A defence of the possibility of legitimate political authority on the basis of its capacity to establish a framework for individuals to coordinate their respective aims and rational plans of life is outside of

[62] See Thomas Hobbes, *Leviathan*, p. 15: 'For True and False are attributes of Speech, not of Things. And where Speech is not, there is neither Truth nor Falshood'.

[63] This tension in Hobbes' thought is noted by Stephen Finn, *Thomas Hobbes and the Politics of Natural Philosophy* (London: Continuum, 2006), pp. 170–171. Leibniz's observations on Hobbes' nominalism are also apposite here: 'Hobbes seems to me to be a super-nominalist. For not content like the nominalists, to reduce universals to names, he says that the truth of things itself consists in names and what is more, that it depends on the human will, because truth allegedly depends on the definitions of terms, and definitions depend on the human will'. See G. W. Leibniz, 'Preface to an Edition of Nizolius', in L. E. Loemker (ed.), *Philosophical Papers and Letters*, 2nd Edn (Dordrecht: Kluwer, 1969), p. 121.

[64] See Joseph Raz, *Practical Reason and Norms* (Oxford: Oxford University Press, 1990), p. 22.

the scope of this paper, yet something akin to this thesis seems implied by Hobbes' strong emphasis upon the perils of the state of nature and importance of peace and stability. This suggests that an account of authority relations as totally artificial indicated by some of Hobbes' rhetoric is untenable.

It is important not to overstate the case regarding the capacity of shared beliefs and meaning to serve as the basis for authority relations. No denial is intended of the thesis that early modern politics is coeval with the dissolution of the bonds of religious and traditional authority and sources of social stability. Moreover, whilst appeals to the capacity of common beliefs and communicative rationality to serve as the basis for authority relations may appear plausible in times of relative peace, it is clear that in times of significant social upheaval such as, for example, the English Civil War or Weimar Germany, prevailing norms are radically placed in question. The claim, however, is not that a shared framework of beliefs is the basis for ongoing social harmony, but that Hobbes' account of the capacity of the sovereign to impose a definitive interpretation of the laws of nature, in the form of civil laws, presupposes an underlying framework of mutual understanding regarding the status of authoritative directives as reasons for action on the basis of their capacity to establish peace and stability. The reason that Hobbes' laws of nature can justify the commands of the sovereign is that the political 'oughts' they generate represent claims to truth regarding, at a minimum, the universality of the desire for self-preservation and the desirability of political order.

In conclusion, Hobbes' attempted reconciliation of positivistic and natural law commitments in order to establish an ultimate source of political and legal authority is ultimately compromised by his sceptical and instrumentalist views on practical reason and nominalist theory of truth. The moral truth articulated in the definitive interpretation of the laws of nature expressed in sovereign commands nonetheless seems to presuppose not only the universality of the desire for self-preservation, but also the intelligibility of authoritative directives as providing presumptively decisive and morally obligating normative reasons for action. The thesis that goods are projections of desire pursued instrumentally undermines the status of those goods as genuine reasons for action capable of providing normative

force to the laws of nature beyond recognition of the prudential benefits of following whatever *de facto* authority happens to be in place.

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